

1 Damion D. D. Robinson, Bar No. 262573
damion.robinson@diamondmccarthy.com
2 DIAMOND MCCARTHY LLP
333 South Hope Street, Suite 4050
3 Los Angeles, California 90071
Tel. (424) 278-9518

4 Attorneys For Defendant
5 ATLANTIC SOLUTIONS GROUP, INC.

6 MORGAN, LEWIS & BOCKIUS LLP
Brian D. Berry, Bar No. 229893
7 Andrea Fellion, Bar No. 262278
Kassia Stephenson, Bar No. 336175
8 One Market, Spear Street Tower
San Francisco, CA 94105-1596
9 Tel: +1.415.442.1000
Fax: +1.415.442.1001
10 brian.berry@morganlewis.com
andrea.fellion@morganlewis.com
11 kassia.stephenson@morganlewis.com

12 Attorneys for Defendant
13 TESLA, INC.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 ROCIO JUAREZ RUIZ, individually, and
17 on behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 TESLA, INC., a Delaware corporation
dba TESLA MOTORS, INC.;
21 ATLANTIC SOLUTIONS GROUP,
INC., a Delaware corporation; and DOES
22 1 through 10, inclusive,

23 Defendants.

Case No. 5:22-cv-0693 FMO (KKx)

Assigned to:
HON. FERNANDO M. OLGUIN

**DEFENDANTS' JOINT NOTICE
OF MOTION AND MOTION TO
COMPEL INDIVIDUAL
ARBITRATION, DISMISS
REPRESENTATIVE ACTION
ALLEGATIONS, AND STAY
ACTION; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: November 17, 2022
Time: 10:00 a.m.
Location: Courtroom 6D
United States Courthouse
350 West 1st Street,
6th Floor
Los Angeles, CA 90012

[Filed concurrently:
1. Declaration of Sam Palazzolo;
2. Declaration of Damion Robinson]

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 17, 2022 at 10:00 a.m., or as soon thereafter as the matter may be heard by the Honorable Fernando M. Olguin, United States District Judge, in Courtroom 6D of the United States District Court for the Central District of California, located at 350 West 1st Street, 6th Floor, Los Angeles, California 90012, Defendant Atlantic Solutions Group, Inc. d/b/a Empire Workforce Solutions (“Empire”) and Defendant Tesla, Inc. d/b/a Tesla Motors, Inc. (“Tesla”) will and hereby do move for an order (a) compelling individual arbitration of all claims of Plaintiff Rocio Juarez Ruiz (“Ruiz”); and (b) staying this action pending the outcome of arbitration.

This Motion is made pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the “FAA”), including 9 U.S.C. § 3 (stay) and § 4 (motion to compel arbitration) on the following grounds.

Empire is a temporary staffing firm, which hired Ruiz on or about May 6, 2021 to work for its client Tesla. At the start of his employment, Ruiz executed a plain and unambiguous agreement to arbitrate all employment claims (“Agreement”). *See* Declaration of Sam Palazzolo in Support of Empire’s Motion to Compel Arbitration (“Palazzolo Decl.”) ¶ 13, Ex. 1. As part of that Agreement, Ruiz also agreed to waive his ability to bring claims on behalf of others, including bringing or participating in class, collective, and non-individual representative actions. *Id.*, ¶ 12.

Arbitration provisions are highly favored as a matter of strong public policy and are enforceable according to their plain terms. Most recently in *Viking River Cruises, Inc. v. Moriana*, 213 L. Ed. 2d 179, 142 S. Ct. 1906 (2022), reh’g denied, No. 20-1573, 2022 WL 3580311 (U.S. Aug. 22, 2022), the Court reaffirmed the basic principle that individual claims may be compelled to arbitration and distinguished

1 “‘individual’ PAGA¹ claims, which are premised on Labor Code violations actually
 2 sustained by the plaintiff, from ‘representative’...PAGA claims arising out of events
 3 involving other employees.” Pursuant to the terms of his Agreement, Ruiz’s
 4 individual PAGA claim must be arbitrated and his non-individual PAGA claim must
 5 be excluded from arbitration and dismissed. This Court can and should enforce the
 6 parties’ clear agreement and order arbitration on an individual basis.

7 This Motion is based on this Notice of Motion and Motion, the attached
 8 Memorandum of Points and Authorities, the accompanying Declarations of Sam
 9 Palazzolo and Damion Robinson, the records and files herein, and such other matters
 10 as the Court may properly consider at the hearing.

11 This Motion is made following the conference of counsel pursuant to L.R. 7-3,
 12 which took place on August 5, 2022. *See* Robinson Decl. ¶ 7.

14 Dated: October 19, 2022

Respectfully submitted,

15 By: s/ Damion Robinson
 16 Damion D. D. Robinson
 DIAMOND McCARTHY LLP

17 Attorneys for Defendant
 18 ATLANTIC SOLUTIONS GROUP,
 INC.

20 Dated: October 19, 2022

Respectfully submitted,

21 By: /s/ Andrea Fellion
 22 Brian D. Berry
 23 Andrea L. Fellion
 MORGAN, LEWIS & BOCKIUS LLP

24 Attorneys for Defendant
 25 TESLA, INC.

27 _____
 28 ¹ Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.*
 (“PAGA”).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Rocio Juarez Ruiz (“Ruiz”) worked for staffing company Defendant Atlantic Solutions Group, Inc. d/b/a Empire Workforce Solutions (“Empire”) and performed services for Defendant Tesla, Inc. (“Tesla”). As part of that employment, Ruiz agreed to arbitrate any claim relating to his employment with Empire and Tesla and waived his ability to bring class, collective, and representative claims on behalf of others. Plaintiff conceded that his arbitration agreement is enforceable when he chose to abandon his class claims. Under now-governing federal law, the Court must also compel Plaintiff’s individual PAGA claim to arbitration.

In *Viking River Cruises, Inc. v. Moriana*, 213 L. Ed. 2d 179, 142 S. Ct. 1906 (2022), reh’g denied, No. 20-1573, 2022 WL 3580311 (U.S. Aug. 22, 2022) (“*Viking*”), the U.S. Supreme Court held that the Federal Arbitration Act “preempts the rule of *Iskanian* [*v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348 (2014)] insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” 142 S.Ct. 1906, 1917, 1924-25. As a result, the employer in *Viking* “was entitled to enforce the agreement insofar as it mandated arbitration of [plaintiff’s] individual PAGA claim,” and the trial court was directed to compel arbitration of the plaintiff’s individual claim and dismiss the non-individual PAGA claims for lack of statutory standing. *Id.* at 1925.

The same is true here. Ruiz is contractually bound to individually arbitrate his employment claims under the terms of the Arbitration Agreement, including his individual PAGA claim. Ruiz admitted that the Arbitration Agreement both encompassed his claims and was enforceable when he voluntarily dismissed his class claims. Ruiz, however, also agreed to waive his non-individual representative action claims. *Viking* makes clear that those claims must be treated in the same manner. It requires the Court to compel arbitration of Plaintiff’s individual PAGA claim and stay or dismiss his remaining non-individual claims for lack of standing. This result is

1 consistent with PAGA’s express language that a PAGA civil action can only be
 2 pursued if it is an action “brought by an aggrieved employee *on behalf of himself or*
 3 *herself* and other current or former employees....” Labor Code Section 2699(a)
 4 (emphasis added). However, if for any reason the Court orders arbitration of
 5 Plaintiff’s individual PAGA claim but does not dismiss his remaining non-individual
 6 claims, it must stay this action pending the arbitration of his individual PAGA claim.

7 **II. BACKGROUND**

8 **A. Empire’s Business Involves Interstate Commerce**

9 Empire is a temporary staffing firm based in Ontario, California. Declaration of
 10 Sam Palazzolo in Support of Empire’s Motion to Compel Arbitration (“Palazzolo
 11 Decl.”) ¶ 2. It employs well over 3,000 temporary staff in California and maintains
 12 offices in seven states, including California, Georgia, Nevada, New Jersey, New York,
 13 Pennsylvania, and Texas. *Id.* As a temporary staffing firm, Empire handles all
 14 recruiting, payroll, workers’ compensation, and benefits for its temporary staff, which
 15 it assigns to its clients such as Tesla. *Id.* ¶ 3.

16 Empire’s primary line of business is light industrial staffing, and it provides
 17 temporary staff to many multi-state companies such as Tesla. Palazzolo Decl. ¶ 4.
 18 Empire also provides temporary staff companies engaged in interstate logistics and
 19 transportation and serves a number of interstate shipping companies. *Id.*

20 **B. Empire and Ruiz Entered into a Valid, Enforceable, Arbitration** 21 **Agreement.**

22 Empire hired Ruiz in May 2021 and assigned him to work as an inspector for
 23 Tesla in San Bernardino, California. Plaintiff’s Second Amended Complaint (“SAC”)
 24 ¶ 9; Palazzolo Decl. ¶ 4. When he was hired, Ruiz executed Empire’s standard
 25 Arbitration Agreement as part of his onboarding documentation via an online portal.
 26 Palazzolo Decl. ¶ 12. The Arbitration Agreement is a stand-alone, three-page
 27 contract, and Ruiz electronically agreed on May 6, 2021. Palazzolo Decl. ¶ 13, Ex. 1.
 28 Like other employees, Ruiz digitally signed the Arbitration Agreement using a unique,
 password-protected user profile under supervision of an Empire manager. *Id.* ¶¶ 5-9.

Also, during his onboarding, Ruiz executed a written acknowledgment of Empire’s employee handbook. Palazzolo Decl. ¶ 14, Ex. 2. Empire’s handbook reiterates that all employment-related disputes will be arbitrated: “[a]s part of your employment with the company, you have agreed to arbitrate all disputes relating to any aspect of your employment.” *Id.* ¶ 15, Ex. 3 at p. 28. The handbook also provides a complete copy of the JAMS Rules governing arbitration. *Id.*, Ex. 3.

According to Plaintiff’s Second Amended Complaint, Ruiz continues to serve as a Tesla inspector to this day. SAC ¶ 9.

C. The Terms of the Arbitration Agreement

The Arbitration Agreement broadly applies to all disputes arising from, related to, or having any relationship with Ruiz and Empire. Palazzolo Decl. Ex. 1, ¶ 1. The agreement also applies to Empire’s co-employers and partners. Palazzolo Decl., Ex. 1 at p. 1 ¶ 1.² It broadly applies to any disputes between the Parties and confirms that it encompasses “all disputes whether based on tort, contract, statute ... equitable law, or otherwise.” *Id.* at ¶ 2. It expressly includes claims under the “California Labor Code,” which includes the PAGA. *Id.*

The Arbitration Agreement confirms that Ruiz has waived his ability to bring claims on behalf of others, whether on a class, collective, or other claim-aggregating basis. *Id.* ¶¶ 11-12. In two consecutive paragraphs, the Arbitration Agreement confirms that Ruiz “agrees that [he] is waiving the right to bring, or to participate in, a class action or collective action, whether filed in a court of law or in arbitration” and Ruiz “further agrees that [he] is waiving the right to bring, or to participate in, a representative action.” *Id.* ¶¶ 11-12. Finally, the Parties agreed that if any portion of the Arbitration Agreement is “deemed invalid or unenforceable, such provision shall be severed and the remainder of [the] Agreement shall be enforceable.” *Id.* ¶ 18.

² The agreement goes on to provide clickable hyperlinks to both the JAMS Standards and the JAMS Rules. *Id.*

1 **D. Plaintiff Filed a Class and PAGA Complaint, Tesla Removed, and**
 2 **Plaintiff Amended his Complaint to Allege only PAGA.**

3 Despite his agreement to arbitrate all claims, Ruiz filed an unverified putative
 4 class action complaint in the San Bernardino County Superior Court. In that
 5 Complaint, Ruiz alleged class claims for: (1) failure to pay minimum wages; (2)
 6 failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure
 7 to authorize and permit rest breaks; (5) failure to indemnify necessary business
 8 expenses; (6) failure to timely pay final wages; (7) failure to provide accurate itemized
 9 wage statements; and (8) unfair business practices. Declaration of Damion Robinson
 10 in Support of Motion to Compel Arbitration (“Robinson Decl.”) ¶ 2.

11 On January 21, 2022, Plaintiff filed his First Amended Complaint (“FAC”)
 12 which alleges the same class claims and adds a ninth cause of action alleging civil
 13 penalties pursuant to PAGA. *Id.* ¶ 3. Tesla timely removed the action to this Court
 14 pursuant to the Class Action Fairness Act (“CAFA”). *Id.* at ¶ 4. The parties have
 15 agreed to a series of stays, first to await the Supreme Court’s ruling in *Viking*, and
 16 then to discuss the impact of that decision on this case. *Id.* ¶ 5.

17 The Supreme Court issued its decision in *Viking* on June 15, 2022, reaffirming
 18 the basic principle that individual claims may be compelled to arbitration. In *Viking*,
 19 the court distinguished “‘individual’ PAGA claims, which are premised on Labor
 20 Code violations actually sustained by the plaintiff, from ‘representative’...PAGA
 21 claims arising out of events involving other employees.” 142 S. Ct. at 1916.

22 On September 19, 2022, the Parties entered a joint stipulation that would allow
 23 Plaintiff to file a Second Amended—PAGA Only—Complaint. Robinson Decl. ¶ 6.
 24 Plaintiff filed his operative Second Amended Complaint (“SAC”) that same day. *Id.*
 25 Pursuant to the terms of their Stipulation, Defendants’ deadline to respond Plaintiff’s
 26 SAC is October 19, 2022. *See* Dkt. Nos. 21, 22, 24.

III. ARGUMENT

A. The Federal Arbitration Act Governs Parties' Arbitration Agreement.

The Federal Arbitration Act (“FAA”) preempts any state law that prohibits arbitration of particular claims or imposes procedural requirements that limit arbitrability. *See, e.g., Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1622-23 (2018); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 236-38 (2013). The FAA sets forth a “liberal federal policy favoring arbitration agreements” and reinforces “the fundamental principle that arbitration is a matter of contract.” *Epic Systems*, 138 S. Ct. at 1621; *Concepcion*, 563 U.S. at 339. The primary purpose of the FAA is to “enforce private agreements into which parties [have] entered.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625-26 (1985). To that end, the FAA requires courts to “rigorously enforce agreements to arbitrate.” *Id.* at 626; *see also Epic Systems*, 138 S.Ct. at 1621. The FAA mandates that any doubts as to arbitrability should be resolved, whenever possible, in favor of arbitration. *See, e.g., Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1418 (2019); *Greentree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452 (2003); *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1131 (9th Cir. 2000) (“[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.”) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983)).³

³ California also has a “strong public policy in favor of arbitration,” embodied in the California Arbitration Act (“CAA”). Cal. Code Civ. Proc., § 1280 *et seq.*; *see also Pinnacle Museum Tower Ass’n v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 245-46 (2012); *Moncharsh v. Heily & Blasé*, 3 Cal. 4th 1, 9 (1992). As a result, “a heavy presumption weighs the scales in favor of arbitrability” under California law as well. *Cione v. Foresters Equity Servs., Inc.*, 58 Cal. App. 4th 625, 642 (1997). An arbitration agreement will be enforced unless, “it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers” the dispute. *O’Malley v. Wilshire Oil Co.*, 59 Cal. 2d 482, 491 (emphasis added).

1 When considering a motion to compel arbitration under the FAA, the Court's
2 role is limited to answering two questions: (1) does a valid agreement to arbitrate
3 exist; and, if it does, (2) does the arbitration agreement encompass the dispute or
4 claims at issue? *Philadelphia Indem. Ins. Co. v. SMG Holdings, Inc.*, 44 Cal. App. 5th
5 834, 840 (2019); *Chiron Corp.*, 207 F.3d at 1130. Where, as here, the answer to both
6 of these questions is "yes," the Court must compel arbitration. 9 U.S.C. §§ 2-4.

7 Here, the FAA governs here for two primary reasons:

8 First, the parties expressly selected the FAA to govern. Paragraph 3 of the
9 Arbitration Agreement provides that it will be "governed and construed in accordance
10 with Federal Arbitration Act." Palazzolo Decl., Ex. 1 at p. 1 (initial caps omitted). It
11 states that "[a]ll issues and questions concerning the construction, validity,
12 enforcement and interpretation of this Agreement shall be governed by, and construed
13 in accordance with" the FAA. *Id.* Choice-of-law provisions selecting the FAA are
14 valid and enforceable. *See, e.g., Rodriguez v. American Technologies, Inc.*, 136 Cal.
15 App. 4th 1110, 1122 (2006); *Kim v. Tinder, Inc.*, 2018 WL 6694923, at *2 (C.D. Cal.
16 July 12, 2018).

17 Second, even without a choice-of-law clause, the minimal requirement of
18 "involving commerce," 9 U.S.C. § 2, is readily satisfied. The FAA applies to any
19 arbitration agreement in any way touching upon interstate commerce. *Circuit City*
20 *Stores v. Adams* (2001) 532 U.S. 105, 112-13; *Prima Paint Corp. v. Flood & Conklin*
21 *Mfg. Co.* (1967) 388 U.S. 395, 401-02 & fn.7. Congress intended to "exercise [its]
22 commerce power to the full," meaning that any connection with interstate commerce
23 will suffice. *Circuit City Stores*, 535 U.S. at 112 (quoting *Allied-Bruce Terminix Cos.,*
24 *Inc. v. Dobson*, 513 U.S. 265, 277 (1995), modification in *Circuit City Stores*). This
25 has generally been interpreted to mean that the business has some impact, even slight,
26 on interstate commerce. *See Katzenbach v. McClung*, 379 U.S. 294 (finding that
27 Commerce Clause was satisfied where businesses of the type at issue, in the
28 aggregate, had an impact on interstate commerce). Courts have consistently held that

1 an employee arbitration agreement is subject to the FAA where the employer's
 2 business, as a whole, involves interstate commerce. *Carmax Superstores Cal., LLC v.*
 3 *Hernandez*, 94 F. Supp. 3d 1078, 1101-02 (C.D. Cal. 2015) (collecting cases); *see*
 4 *also Nguyen v. Applied Med. Res. Corp.*, 4 Cal. App. 5th 232, 245-46 (2016).

5 It is beyond dispute that the business of Empire and Tesla impacts interstate
 6 commerce. Empire is a multi-state firm with offices in seven states, which services
 7 interstate shipping and logistics companies, among others. Palazzolo Decl., ¶¶ 2-4. It
 8 also recruits and assigns staff across state lines—*i.e.*, assigning workers in one state to
 9 clients in other states. *Id.* The impact of Tesla's business on interstate commerce is
 10 also clear. It is a nationwide automotive company, which sells vehicles throughout
 11 the United States and internationally, and maintains dealerships around the world.⁴

12 **B. The Arbitration Agreement Governs All Claims and Parties.**

13 **1. The Arbitration Agreement Applies to Ruiz's Claims.**

14 The Arbitration Agreement plainly covers Ruiz's claims, as evidenced by the
 15 fact that he voluntarily dismissed his class and non-PAGA claims. The plain language
 16 of the clause defining covered disputes is all-encompassing, applying to any and all
 17 disputes arising from Ruiz's employment. Indeed, the Arbitration Agreement applies
 18 to "any controversy, claim, or dispute arising from, related to, or *having any*
 19 *relationship or connection whatsoever* with the employment of, or the association
 20 between, the employee . . . and Atlantic Solutions Group Inc. dba Empire Workforce
 21 Solutions." Palazzolo Decl., ¶ 2, Ex. 1 (emphasis added).

22 This is a prototypical "broad clause," covering all disputes "related to" or
 23 arising in any way from the employment relationship. *See Collins & Aikman Prods.*
 24 *Co. v. Building Sys., Inc.*, 58 F.3d 16, 20 (2d Cir. 1995). "Broad clauses" have
 25

26 ⁴ Tesla's Form 10-K confirms that it has manufacturing centers throughout the United
 27 States and world. *See* <https://www.sec.gov/Archives/edgar/data/1318605/000095017022000796/tsla-20211231.htm> (last accessed October 12, 2022). Empire
 28 and Tesla respectfully request judicial notice of this fact as not reasonably subject to
 dispute. Fed. R. Evid. 201.

consistently been interpreted to cover all disputes between the parties other than those specifically excluded. *E.g.*, *Southland Corp.*, 465 U.S. at 15 n.7; *Prima Paint*, 388 U.S. at 402; *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720-21 (9th Cir. 1999) (collecting cases). In the employment context, “broad” clauses apply to all claims of an employee against the employer, unless they are specifically carved out. *See, e.g.*, *Golenia v. Bob Baker Toyota*, 915 F. Supp. 201, 205 (S.D. Cal. 1996); *Valdiviezo v. Phelps Dodge Hidalgo Smelter, Inc.*, 995 F. Supp. 1060, 1067-68 (D. Ariz. 1997); *Steele v. Am. Mortg. Mgmt. Servs.* 2012 WL 5349511, at *3 (E.D. Cal. Oct. 26, 2012).

Ruiz’s wage-and-hour claims are expressly included. *See* Palazzolo Decl., Ex. 1 at p. 1 ¶ 2 (“Included within the scope this Agreement are all disputes, whether based on tort, contract, statute. . .”). The agreement makes clear that it covers claims arising under the “California Labor Code.” *Id.* All of Ruiz’s substantive claims arise under the California Labor Code. PAGA is codified at Labor Code § 2698, *et seq.* Even if Paragraph 1 were not clear that it covers all of Ruiz’s claims—and it is—Paragraph 2 reinforces that the Arbitration Agreement is intended to govern exactly this type of dispute. *Id.*

2. The Agreement Covers Empire and Tesla.

A non-signatory to an arbitration agreement may enforce an arbitration agreement “if relevant state contract law allows the litigant to enforce the agreement.” *Franklin v. Community Regional Med. Ctr.*, 998 F.3d 867, 870 (9th Cir. 2021) (quoting *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128 (9th Cir. 2013)). Under California law, a third-party beneficiary may enforce an arbitration agreement. *Id.* This rule applies to a temporary staffing firm’s arbitration agreement with its employees. *Id.* at 871-875; *Garcia v. Pexco, LLC*, 11 Cal. App. 5th 782, 785-86 (2017) (compelling arbitration against staffing company and client even though client did not execute arbitration agreement).

The Arbitration Agreement makes clear that it is intended to cover claims asserted against Empire’s clients. It expressly includes claims against “co-

1 employers.” Palazzolo Decl., Ex. 1, ¶ 1. Plaintiff sues Empire and Tesla as joint
 2 employers, alleging that both of them “at all relevant times ... employed Plaintiff and
 3 the other Aggrieved Employees, and exercised control over their wages, hours, and
 4 working conditions.” SAC ¶ 14. Because claims against Tesla are specifically
 5 covered, Ruiz must be compelled to arbitrate them as a matter of contract. As an
 6 intended third-party beneficiary of the Arbitration Agreement, Tesla has the right to
 7 enforce that agreement. *See Mundi v. Union Sec. Life*, 555 F.3d 1042, 1046 (9th Cir.
 8 2009); *Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844, 847 (9th Cir. 2013).

9 California law is equally clear that allegations of agency, alter ego, and joint
 10 employment entitle the defendants to enforce arbitration agreements with any of them.
 11 *Macaulay v. Norlander*, 12 Cal. App. 4th 1, 7-8 (1992). Plaintiff has sued Empire and
 12 Tesla as alleged agents and joint employers with one another and has asserted all of
 13 his claims against both companies as “Defendants” jointly. A plaintiff is bound by
 14 these allegations when it comes to enforcing an arbitration agreement. *Thomas v.*
 15 *Westlake*, 204 Cal. App. 4th 605, 614-15 (2012). His claims against Tesla are
 16 “inherently inseparable from arbitrable claims against signatory defendants,” and must
 17 be referred to arbitration. *Metalclad Corp. v. Ventana Env. Org. P’ship*, 109 Cal.
 18 App. 4th 1705, 1713 (2003) (citation and quotation marks omitted) (reversing order
 19 declining to compel arbitration of claims against non-signatory); *see also Turtle Ridge*
 20 *Media Group, Inc. v. Pac. Bell Directory*, 140 Cal. App. 4th 828, 832-34 (2006).

21 **C. Under *Viking*, Plaintiff’s Obligation to Arbitrate His Individual**
 22 **PAGA Claim Is Enforceable.**

23 In *Viking*, the U.S. Supreme Court recently held that the FAA preempts the
 24 “indivisibility” rule in *Iskanian* “insofar as it precludes division of PAGA actions into
 25 individual and non-individual claims through an agreement to arbitrate” and operates
 26 to bar an individual PAGA claim from being compelled to arbitration. 142 S.Ct. at
 27
 28

1 1922-25.⁵ As a result, the employer in *Viking* “was entitled to enforce the agreement
2 insofar as it mandated arbitration of [plaintiff’s] individual PAGA claim.” *Id.* at 1925.

3 Here, Plaintiff agreed to arbitrate all claims, including his PAGA claim, on an
4 individual basis. In two parallel, adjacent provisions, the Arbitration Agreement
5 expressly precludes Plaintiff from asserting a non-individual claim in arbitration,
6 whether in the form of a class, collective, or representative action. Ex. 1, ¶ 11 (barring
7 class or collective actions), ¶ 12 (barring non-individual PAGA actions). Even if the
8 Agreement did not contain this express limitation, the U.S. Supreme Court has made
9 clear that a court cannot infer from an arbitration agreement’s “silence or ambiguity”
10 that it permits arbitration on a non-individual basis. *See Lamps Plus*, 139 S. Ct. at
11 1417 (“Neither silence nor ambiguity provides a sufficient basis for concluding that
12 parties to an arbitration agreement agreed [arbitrate on a class-wide basis].”); *Stolt-*
13 *Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 687, 130 S. Ct. 1758, 1776,
14 176 L. Ed. 2d 605 (2010) (“We think that the differences between bilateral and class-
15 action arbitration are too great for arbitrators to presume, consistent with their limited
16 powers under the FAA, that the parties’ mere silence on the issue of class-action
17 arbitration constitutes consent to resolve their disputes in class proceedings.”).

18 Nor is there any doubt that the Agreement permits Plaintiff to pursue his
19 individual PAGA claim in arbitration. According to the Agreement, Plaintiff waived
20 his “right to bring, or to participate in, a class action or collective action” or a
21 “representative action, including a [PAGA] action.” Ex. 1, ¶¶ 11, 12. It says nothing
22 about precluding him from pursuing a PAGA claim on an individual basis. Following
23

24 ⁵ Prior to *Viking*, California courts followed the so-called “*Iskanian* rule,” that a
25 PAGA claim could not be divided into individual and non-individual components and,
26 thus, could never be compelled to individual arbitration. Even before *Viking*,
27 however, federal courts routinely disagreed with *Iskanian* as violative of the FAA.
28 *See, e.g., See, e.g., Quevedo v. Macy’s, Inc.*, 798 F. Supp. 2d 1122, 1142 (C.D. Cal.
2011); *Grabowski v. Robinson*, 817 F. Supp. 2d 1159, 1180-81 (S.D. Cal. 2011);
Fardig v. Hobby Lobby Stores, Inc., 2014 WL 4782618, at *4 (C.D. Cal. 2014);
Langston v. 20/20 Cos., Inc., 2014 WL 5335734, at *7 (C.D. Cal. 2014).

1 *Viking*, courts recognize that this type of “representative” action waiver is enforceable
2 because it waives only the employee’s right to represent other employees, but does not
3 waive the employee’s right to represent the State in an individual PAGA arbitration.
4 *See Viking*, 142 S.Ct. at 1916, 1924; *Shams v. Revature LLC*, No. 22-CV-01745-NC,
5 2022 WL 3453068 (N.D. Cal. Aug. 17, 2022), at *2 (enforcing PAGA waiver under
6 *Viking River* because the “context of where ‘private attorney general’ appears makes
7 clear that the waiver applies to non-individual representative actions, not [the
8 employee’s] individual PAGA claims on behalf of the State.”); *Johnson v. Lowe’s*
9 *Home Centers, LLC*, No. 221CV00087TLNJDP, 2022 WL 4387796, at *2 (E.D. Cal.
10 Sept. 22, 2022) (citing *Shams*). This is also consistent with the “cardinal rule[]” of
11 contract interpretation that a contract must be given a lawful construction wherever
12 possible. 14A Cal. Jur. 3d Contracts § 216; *see also* Cal. Civ. Code § 1643 (“such an
13 interpretation as will make it lawful [and] operative”); *Koenig v. Warner Unif. Sch.*
14 *Dist.*, 41 Cal. App. 5th 43, 55 (2019) (noting that courts, “will not construe a contract
15 in a manner that will render it unlawful”).

16 Compelling arbitration also comports with the basic rationale and economic
17 realities that motivate waivers of class actions, collective actions, or representative
18 PAGA actions alike. Non-individual PAGA actions, like class actions, involve large,
19 complex, costly, and protracted proceedings, brought on behalf of large numbers of
20 employees who have expressed no desire to sue. “Arbitration is poorly suited to the
21 higher stakes” of this type of litigation. *Concepcion*, 563 U.S. at 350. By
22 exponentially increasing the size of the case and the employer’s litigation exposure,
23 representative actions give rise to the same “risk of ‘in terrorem’ settlements” as class
24 actions. *Viking*, 142 S.Ct. at 924 (quoting *Concepcion*, 563 U.S. at 350). It is rational
25 for employers and employees to agree to opt out of these complex and uncertain
26 proceedings, and to elect to resolve any legitimate disputes on an individual basis
27 through relatively quick and inexpensive arbitration proceedings.

28 Finally, even if the Agreement’s reference to a “representative action” were

(erroneously) deemed to constitute a wholesale waiver of Plaintiff's right to pursue PAGA claims, the Agreement is still enforceable as to the individual component of the PAGA claim because the Agreement has a severability clause. *See Viking* 142 S. Ct. at 1925 (“[T]he severability clause in the agreement provides that if the waiver provision is invalid in some respect, any ‘portion’ of the waiver that remains valid must still be ‘enforced in arbitration.’”). “California cases take a very liberal view of severability, enforcing valid parts of an apparently indivisible contract where the interests of justice or the policy of the law would be furthered.” *Koenig*, 41 Cal.App.5th at 56 (citation omitted). Indeed, the Arbitration Agreement provides that “[i]f any provision of this Agreement is deemed invalid or unenforceable, such provision shall be severed and the remainder of this Agreement shall be enforceable.” Ex. 1 at ¶ 18. Thus, the “remainder” of the Agreement that requires individual arbitration of all claims would be enforceable even if the “representative” action waiver were deemed an unenforceable wholesale waiver of PAGA claims. *See Viking*, 142 S. Ct. at 1924-25 (holding that the severability clause entitled employer to enforce the agreement “insofar as it mandated arbitration of [the employee’s] individual PAGA claim.”); *Johnson*, 2022 WL 4387796, at *4 (recognizing that under *Viking River*, the severability clause would require the enforcement of the arbitration agreement “even if the Court construed the provision as a wholesale waiver”).

For these reasons, the Arbitration Agreement is an enforceable agreement that requires Plaintiff to arbitrate his individual PAGA claim. Thus, the Court must compel individual arbitration.

D. Under *Viking*, the Court Should Dismiss this Action After Compelling Individual Arbitration.

In *Viking*, the Supreme Court held that “PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding.” 142 S.Ct. at 1913. This is because “[u]nder PAGA’s [statutory] standing requirement, a plaintiff can maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual

1 claim in that action.” *Id.* (citing Cal. Lab. Code §§ 2699(a) and (c), which together
2 only authorize PAGA civil actions “brought by an aggrieved employee on behalf of
3 himself or herself and other current or former employees”). As a result, the employee
4 “lack[ed] statutory standing to continue to maintain her non-individual claims in court,
5 and the correct course was to dismiss her remaining claims.” *Id.*

6 *Viking* requires the same outcome here. This Court should compel Plaintiff’s
7 individual PAGA claim to arbitration and dismiss the non-individual claims. Were
8 the Court to decline at this time to follow *Viking* on this point as to dismissal of
9 Plaintiff’s non-individual claims, the Court still must stay this action pending
10 Plaintiff’s individual arbitration. *See* 9 U.S.C. § 3 (“the court ... shall on application
11 of one of the parties stay the trial of the action until such arbitration has been had”). A
12 stay preserves the status quo and the jurisdiction of the arbitrator. Where a valid
13 arbitration agreement exists, the stay is mandatory. *Houlihan v. Offerman & Co.*, 31
14 F.3d 692, 695 (8th Cir. 1994) (“A federal court must stay proceedings and compel
15 arbitration once it determines that the dispute falls within the scope of a valid
16 arbitration agreement”).

17 **IV. CONCLUSION**

18 *Viking* worked a significant change in controlling law. It overruled the *Iskanian*
19 rule “insofar as it precludes division of PAGA actions into individual and non-
20 individual claims through an agreement to arbitrate” and found that individual PAGA
21 claims may be compelled to arbitration. *Viking*, 142 S.Ct. at 1924. This change is
22 dispositive of Plaintiff’s claims here. The Parties are subject to a binding arbitration
23 agreement that requires Plaintiff to arbitrate any employment-related claims on an
24 individual basis. Thus, the Court should grant this motion, compel arbitration of
25 Plaintiff’s individual PAGA claim, and dismiss his non-individual PAGA claims. If
26 the Court declines at this time to dismiss those remaining claims, it must stay the non-
27 individual PAGA claims during the pendency of the individual arbitration.

1 Dated: October 19, 2022

Respectfully submitted,

3 By: /s/ Damion Robinson

4 Damion D. D. Robinson
DIAMOND McCARTHY LLP

5 Attorneys for Defendant
6 ATLANTIC SOLUTIONS GROUP,
7 INC.

8 Dated: October 19, 2022

Respectfully submitted,

9 By: /s/ Andrea Fellion

10 Brian D. Berry
11 Andrea L. Fellion
MORGAN, LEWIS & BOCKIUS LLP

12 Attorneys for Defendant
13 TESLA, INC.

14 **ATTESTATION**

15 I, Damion Robinson, attest that all other signatories listed, and on whose behalf
16 this filing is submitted, concur in the filing's content and have authorized the filing.
17

18 Dated: October 19, 2022

DIAMOND McCARTHY LLP

20 By: /s/ Damion Robinson

21 Damion D. D. Robinson

CERTIFICATE OF SERVICE

I, the undersigned, certify that I am filing the foregoing document using the Court's CM/ECF online filing system. I am informed and believe that filing using the CM/ECF system will result in electronic notice to all interested parties who have appeared in the action.

Dated: October 19, 2022

s/ Damion Robinson
Damion Robinson